

DOCUMENT RESUME

02103 . [A1322277]

[Protest that Army Abused Its Discretion in Refusing to Extend Date]. B-188321. May 4, 1977. 2 pp.

Decision re: Falcon Research & Development Co.; by Paul G. Dembling (for Elmer E. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Materiel  
Development and Readiness Command.

Authority: A.S.P.R. 7-2002.4(a)(i). 3 Presidential Documents  
149. B-186292 (1976). B-181204 (1974).

The protester alleged that the Army abused its discretion in refusing to extend the date of receipt for proposals because of severe weather conditions. No basis was found for questioning the reasonableness of the Army's refusal to extend the closing date. (RRS)

02103

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*B. G. H. H.  
Proc. II*

FILE: B-188321

DATE: May , 1977

MATTER OF: Falcon Research & Development Co.

**DIGEST:**

Protest that Army abused its discretion in refusing to extend date for receipt of proposals, due to extraordinary weather conditions, or that proposal should be considered notwithstanding that it was late is denied.

The Falcon Research & Development Co. (Falcon) protests the refusal of the Army Materiel Development and Readiness Command (Army) to consider its proposal regarding RFP DAAJ01-77-R-0046 for systems engineering analysis and evaluation services.

It is conceded that Falcon's proposal neither was received by the Army by January 31, 1977, the date set for the receipt of initial proposals, nor was posted by certified mail more than five days prior to that date, which would have insured its consideration. See Armed Services Procurement Regulation § 7-2002.4(a)(i) (1976 ed.). Nevertheless, Falcon argues that this case is unusual. Noting that this is a procurement, "not for a routinely manufactured commodity but for sophisticated technical services," it contends that its proposal should have been accepted, to enable the Government to consider all viable options and because the circumstances resulting in its failure to timely hand deliver its proposal were in its view extraordinary. Moreover, Falcon suggests that its proposal should have been considered because in its view the Army abused its discretion in refusing to extend the closing date beyond January 31.

Briefly, offers were to be received in St. Louis, Missouri. Falcon is located in the Buffalo, New York area. Severe weather conditions existed in western New York State during the period in question, prompting the President to determine on January 29, 1977, that the area was entitled to assistance under the Federal Disaster Relief Act of 1974, due to an abnormal accumulation of ice and snow. 3 Presidential Documents 149 (1977). Falcon personnel were unable to obtain air transportation from Buffalo on January 30 or 31, and were prevented by police from using public roads.

B-188321

Where it is anticipated that inclement weather will prevent timely hand delivery of an offer or bid, the appropriate relief, if any, is an extension of the closing or bid opening date. If due consideration, in fact, is given to such a request prior to the due date and is denied, we believe it would adversely affect the integrity of the competitive procurement system, if a late bid or offer thereafter is permitted to be considered. Although Falcon contends that the facts of this case are sufficiently unusual to permit an exception without impairing the integrity of the procurement system, we do not agree. We held in Bertolini Engineering Co., B-186292, June 16, 1976, 76-1 CPD 386, that late delivery precluded consideration of a hand carried proposal, where delivery was delayed by cancellation of a commercial airline flight. There, too, the protester argued that the Government should consider the character of the procurement, specifically the protester's unique design approach and possible savings which the Government might realize by permitting it to compete. In rejecting that view, we observed that maintenance of Government procurement standards assuring all potential offerors that they will be treated equally and impartially is of greater importance than realizing whatever monetary advantage that might result in making an exception in a single procurement. See, also, Emergency Care Research Institute, B-181204, August 23, 1974, 74-2 CPD 118.

As suggested by the protester, the decision not to extend the closing date, of course, must not be arbitrary. As to the reasonableness of the Army's denial of a second extension in the closing date for submission of proposals, the request was denied because: (1) a similar request by Falcon (among others) had been granted previously, extending the originally scheduled closing date from January 17, 1977, to January 31, 1977, and (2) further delay would create scheduling difficulties for the using activity. (Five proposals were timely received.)

We see no basis for questioning the reasonableness of the Army's refusal to extend the closing date for a second time, for the reasons which it has given.

Accordingly, the protest is denied.

  
For The Comptroller General  
of the United States